The Solicitors' Journal

Vol. 96 October 25, 1952 No. 43

CURRENT TOPICS

Two Judges

Two ex-judges, both ripe in years and wisdom, each great in his different way, died on the same day last week. Sir MAURICE GWYER, G.C.I.E., K.C.B., K.C.S.I., whose notable editions of Anson on Contracts have been the foundation of so many lawyers' knowledge of that subject, died, aged 74, on 12th October. He was the first Chief Justice of the Indian Federal Court, a Vice-Chancellor of Delhi University, Fellow of All Souls, and chief draftsman of the India Act, 1935, as well as a member of a great many Government commissions and inquiries. His Honour H. M. STURGES, Q.C., who died at the age of 89 on 12th October, was well known as a county court judge from 1913 until 1929. Older practitioners will remember that when it was proposed to transfer him from the North Lancashire circuit on a rearrangement of the circuits, the step was taken of presenting a petition, signed by practically all county court officials and solicitors practising on his circuit, to the Chancellor of the Duchy, praying that his services might be retained there. He remained there until 1921, when the Lord Chancellor appointed him to the West London County Court. He retired in 1929 but remained Recorder of Windsor until 1945. In 1926 he became a bencher of Lincoln's Inn and in 1945 he became Treasurer.

Viscount Templewood on Criminal Penalties

IN his speech to the annual general meeting of the Magistrates' Association on 17th October, the Rt. Hon. Viscount TEMPLEWOOD said that when he saw that indictable offences had doubled since the time when he was Home Secretary, he inevitably asked himself the question whether a plan that was made in 1938, and became an Act of Parliament in 1948, was applicable to a world that has passed through five years of devastating war, and is still involved in a chapter of shortages of goods and high prices to tempt the dishonest. As to the general answer, the wave of crime was not confined to this country. In New York, for instance, the rise had been much steeper than it had been in London. Evidence such as this disposed of the argument that the reforms of the 1948 Act have led to the increase of crime in Great Britain in 1952. To the criticism that the new methods are too soft, his answer was that it was not the methods that were at fault, but the fact that they were not being fully used. The Act of 1948 was not based upon sentiment or theory. It was the result of years of first-hand experience and expert advice. Nor was the Act a soft Act for the criminal. The provisions for corrective training and preventive detention provided much heavier punishment for the hardened offender than ever before. Lastly, the Act was not intended to be applicable only to a period when the figures of crime were falling. The provisions of the Act were intended to deal with an increase of crime no less than with a decrease. He attributed failure fully to implement the 1948 Act to shortage of prison accommodation and staffs, and shortage of police and of houses for the police.

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Report of the Departmental Committee on Copyright

THE Committee appointed on 9th April, 1951, by the President of the Board of Trade "to consider and report whether any changes are desirable in the law relating to copyright in literary, dramatic, musical, and artistic works with particular regard to technical developments and to the revised International Convention for the Protection of Literary and Artistic Works signed at Brussels in June, 1948, and to consider and report on related matters" presented its report on 13th October (Cmd. 8662, H.M. Stationery Office, 4s. 6d.). The Committee held fifty-seven meetings and received evidence from many societies and individuals as well as representations in writing from a large number of interested organisations. The MARQUESS OF READING, who was the original Chairman of the Committee, resigned at the end of October, 1951, on appointment as Under-Secretary of State for Foreign Affairs, and the Committee proceeded under the Chairmanship of Sir HENRY GREGORY, K.C.M.G., C.B. The Committee recommends that Her Majesty's Government should accede to the revised Convention signed at Brussels, and the report deals with such subjects as: (*a*) the period for which copyright protection should be granted; (*b*) "fair dealing" with copyright works, including copying in libraries; (*c*) the requirement for the deposit of copies of books at the British Museum and other libraries; (*d*) rights in gramophone records, cinematograph films, and television programmes; (*e*) performing rights, and fees charged for public performance of copyright works; (*f*) the relationship between artistic copyright and registered designs; (*g*) rights in typographical arrangements. The Committee recommends that no right should be vested in promoters to prevent or control the copying or recording of sporting events and other spectacles but that the B.B.C. or any broadcasting authority should have the right to authorise and control public performances of its television programmes, but not its sound broadcasts. It is also suggested that tariffs payable to collecting societies of a monopolistic or quasi-monopolistic character for licences for public performance and their exercise of the right to refuse authority for performance should be subject to independent review. A tribunal should be set up to decide disputes between collecting societies and broadcasting authorities controlling performing rights on the one hand, and the users, or licensees, on the other. The findings of the tribunal should be final and its cost should be borne by the Exchequer. The report also recommends that the protection given by the Fine Art Copyright Act, 1862, to artists against the alteration of their works, etc., should be extended to apply to literary and musical works, and that the law should be amended to draw a distinction between the use of a place of entertainment for gain and its use for charitable or non-commercial purposes.

The Dangers of the Bar

IN the series of articles now appearing in the *Financial Times* under the title "Professions and their Rewards," one on "The Dangers of the Bar" in the issue of 11th October contains some interesting figures. According to the article there are about 2,000 practising barristers in the U.K. as against 10,000 non-practising barristers. There were 1,039 calls to the Bar in 1950 and 1951 as against 582 in the two immediate pre-war years, but a recent survey showed that only just over 25 per cent. of those called in 1947 were still practising at the English Bar. While many barristers find their legal qualifications useful in industry, the figures nevertheless show the keenness of competition. A rough estimate in the article puts the number of Queen's Counsel earning over £10,000 a year at approximately a dozen, of whom three or four are thought to earn over £20,000 a year. Between thirty and fifty juniors earn from £5,000 to £8,000 a year, and the majority of barristers who have been in practice for over three years earn over £1,000 a year. The solicitors' branch of the legal profession, the article states, is "blue chip" by comparison with the Bar, but the Bar offers higher yield to those prepared to take the risk. The figures of those who go out of practice each year, it concludes, demonstrate the truth of the dictum that many are called but few are chosen. One important aspect of the dangers of the Bar which the article does not mention is the utter impossibility for any but a small minority of barristers, after the tax collector has taken his toll, to make sufficient provision by way of insurance or saving for old age. Unhappy as is the position in this respect of other professional men, including solicitors, they have their practices as realisable assets in their old age, but the barrister who is past the age of work and is without other means is in an unfortunate plight.

Letting Frauds and Registration of Agents

SIR GEOFFREY HUTCHINSON, Q.C., M.P., speaking to the Valuers, Surveyors and Estate Agents' Association on 16th October with regard to the Bill he was introducing into Parliament for the registration of members of their profession, said there had sprung into life since the war a number of persons who had engaged in the business of letting houses and flats in circumstances which would not commend themselves to members of that association. There were certain transactions connected with decorations, furniture and fixtures. Sometimes these seemed to play a more important part than payment of the rent. The whole thing was an infamous swindle on the unhappy section of the people who were desperate for a home. Sir Geoffrey said that already the short debate he initiated in the House of Commons last April and the firm warning given by the MINISTER OF HOUSING, that proceedings would be taken where fraud could be proved, had had their effect. If registration of agents does not bring with it any substantial disadvantage to legitimate dealers, it strongly merits consideration as a remedy.

Where to Stop after an Accident

THE magistrates at Melksham, Wiltshire, on 15th October, heard an argument by Mr. J. P. MOOR, solicitor, that the law, although requiring a motorist to stop after an accident, did not define where he must stop. Mr. Moor said that the law did not state whether the motorist must stop where the accident happened or five miles away. His client stopped 150 yards from the accident and a policeman spoke to her. For the prosecution, Police Inspector WOODHAM said it had been held that a motorist must stop at the scene of an accident, but defending solicitor replied that there had never been a stated case where a motorist must stop when the charge was limited, as in that case, to failing to stop. The magistrates dismissed the summons.

Stock Exchange: New Scale of Commissions

THE proposed new scale of Stock Exchange commissions and rebates which the Stock Exchange Council have now published shows only adjustments of some of the individual anomalies in the original draft, which was published in August (*ante*, p. 519). The amended rules will come up for confirmation by the Council on 17th November; if confirmed they will be put into operation on 1st December. The Council have adopted a special scale for country business, which preserves certain existing concessions to country brokers as against "non-professional" agents.

"BEFORE THE TRAFFIC COMMISSIONER"

THE system of licensing "motor goods vehicles" was first introduced by the Road and Rail Traffic Act, 1933, which statute followed the Salter Report produced by the Conference on Road and Rail Transport held under the auspices of the Ministry of Transport. "Actual or prospective congestion or overloading of the roads" was one of the problems for which the Conference suggested a system of licences as the remedy.

Under the 1933 Act the licensing authority was vested in the Chairmen of the Traffic Commissioners for the various traffic areas into which the whole country had been divided by the Road Traffic Act, 1930. In each area three Commissioners are appointed by the Minister of Transport, two being persons selected from panels drawn up by the county councils and borough and urban district councils concerned. These persons hold office for three years. The third member of each Commission, who acts as Chairman, is "such person as the Minister thinks fit to appoint" under s. 63 (3) of the Road Traffic Act, 1930. This last is a full-time appointment, and by virtue of the Chairmen of Traffic Commissioners, &c. (Tenure of Office) Act, 1937, the Chairman holds office during Her Majesty's pleasure.

The Chairman, who, incidentally, is referred to as "the learned licensing authority," sits alone to hear applications for A and B licences. These are known as "discretionary licences" as distinct from the C licence, which is generally a "licence as of right." An A licence entitles its holder "to use the authorised vehicles for the carriage of goods for hire or reward, or for the carriage of goods" otherwise than for hire or reward if they are carried "for or in connection with his business as a carrier of goods, whether by road transport or any other kind of transport." This type of licence, known as the public carrier's licence, is required for the conduct of any road haulage business. To use a lorry for road haulage purposes without obtaining an A licence is an offence, the penalties being up to £20 for a first offence and up to £50 for a second or subsequent offence (s. 35 (2)). This licence is granted for a particular vehicle to a particular person, and is not transferable (s. 21). A licences are granted for five years only, and their renewal is every bit as "discretionary" as the original granting of them.

A C licence, on the other hand, being granted "as of right," is renewed automatically, provided that the conditions under which it is granted have been complied with. This licence entitles the holder to use the authorised vehicles "for the carriage of goods for or in connection with any trade or business carried on by him, subject to the conditions that no vehicle which is for the time being an authorised vehicle shall be used for the carriage of goods for hire or reward." This licence, the private carrier's licence, is required by all firms and persons who employ vans or lorries in the distribution or collection of goods manufactured or sold by them. Such lorries or vans must not be used for road haulage purposes, and the licensees must comply with the statutory conditions as to fitness of the vehicles, payment of employees, employees' hours of work, keeping of records and the loading of the vehicles. It will be observed that the imposition of these conditions not only secures certain advantages to the public, but also subjects road transport to some of the statutory conditions subject to which the railways have always operated, and thus tends to remove some of the "unfair advantages" which road transport had prior to 1933 over the railways. These conditions apply also to A and B licences. A breach of these conditions is not only a criminal offence—it may also result in revocation or suspension of the licence. The Act provides, however, that the Chairman must be satisfied, after holding a public inquiry if so requested by the licence-holder, that the frequency of the breach of conditions, or the wilfulness of a particular breach, or the damage to the public done by a particular breach, justifies suspension or revocation.

The third type of licence, the B licence, is that required by a limited carrier. It entitles the holder "to use the authorised vehicles as he thinks fit from time to time, *either* for the carriage of goods for or in connection with any trade or business carried on by him *or*, subject to any condition which the licensing authority in the exercise of his discretion to attach conditions to a B licence may attach to the licence, for the carriage of goods for hire or reward." This licence thus permits the holder to use his vehicle either as a road haulier or as an ancillary user. This licence is granted only for two years and, as has already been stated, is discretionary. It is, moreover, even more discretionary than the A licence, for the learned licensing authority can attach to it conditions other than those contained in the Act, e.g., a condition that the vehicle shall be used only in a specified district or only between specified places, or that only certain classes or descriptions of goods should be carried, or that they should be carried only for certain specified firms or persons. He has also a general power to impose such conditions as he may think fit "in the public interest and with a view to preventing uneconomic competition." This last passage covers uneconomic competition between two road users as well as between road and rail where both compete for the same business.

Perhaps the most important section of the 1933 Act from the practitioner's point of view is s. 11, which provides that the licensing authority shall publish notice of applications for A and B licences. A periodical entitled "Applications and Decisions" is published by the Traffic Commissioners, weekly or fortnightly as circumstances require, which, as its name implies, gives details of decisions reached and of new applications awaiting hearing. Copies can be inspected freely at any of the Commissioners' offices or will be posted on payment. Notice must also be given of applications to vary these licences by increasing the number of vehicles licensed, or, in the case of B licences, to vary or extend the places between which vehicles so licensed can be used for the carriage of goods for hire or reward. The publication of these notices is closely watched by the existing road haulage interests and by the Transport Commission, and objections to the granting of the licence or to its extension are usually submitted to the Traffic Commissioner as a matter of course, and he then hears the application for the licence, etc., and the objections thereto, in public. Legal representation at these hearings is very frequent, and a practitioner may find himself acting either for an applicant for a licence or for one of the objectors thereto.

Before reviewing the procedure at such applications and the evidence necessary to support or attack an application, it will be well to give some account of the manner in which the Traffic Commissioner approaches the decision which he has to make. First, it should be observed that he has under the Act a general power "to hold such inquiries as he thinks necessary for the proper exercise of his functions under the Act" (s. 11 (5)). Second, the Act directs that "the licensing authority in exercising his discretion shall have regard primarily to the the interests of the public generally, including those of persons requiring, as well as those of persons

providing, facilities for transport" (s. 6 (2)). He is also required to take into account the applicant's previous conduct as a carrier of goods, if he already has goods licences, the extent to which these authorise him to use his vehicles for the carriage of goods for hire, the number and type of vehicles which he proposes to use under the licence for which he is applying, and the need for providing for occasions when vehicles are out of use for repair or overhaul. The Commissioner is also required to act under the "general directions" of the Minister, which means that he will have to take into account general policy laid down by the Minister, which policy may not be known to the applicant or his advisers. This does not, of course, give the Minister power to interfere with any particular decision. The Chairmen Commissioners are not purely administrative tribunals, inasmuch as they hold office during Her Majesty's pleasure, but at the same time they must exercise their judicial functions subject to the general principles laid down by the 1933 Act and by the Minister.

A practitioner appearing for an applicant should go before the tribunal armed with evidence as to the extent to which, if any, the applicant has carried goods in the past and the districts in which he has carried them, with details of the class of goods carried, and full particulars as to the proposed user of the vehicles in the future. Extracts, capable of proof, should be produced from the applicant's books showing the annual and monthly turnover of recent years, and evidence of the tonnage of goods carried over the same period. If it has been necessary for the applicant to hire the vehicles of other carriers in order to fulfil his commitments this should also be put in evidence. Applicants must be able to show that the carriage of goods which they are seeking to undertake by the application could not, owing to the nature of the goods or for some other good reason, be conveniently or satisfactorily done by other existing transport facilities.

Where the applicant has bought an existing transport business he must produce full proof of the use to which the vehicles were put by their former owner, and produce his recent balance sheets and profit and loss accounts. It must be shown that the drivers' records have been properly kept over the last six months in accordance with s. 16 of the 1933 Act. The agreement for the sale or assignment of the business must be produced together with the memorandum and articles of any new business which has been formed to take over the old one.

A plan of the area which it is proposed to cover should be forthcoming, with the positions of the applicant's proposed customers and of the objectors to his application clearly marked. This will enable the Commissioner the better to visualise the arguments put forward as to how the public interest would be advanced by the granting of the application. The objectors will produce witnesses to show that they could provide the transport required, and it is therefore essential that the applicant should himself produce as witnesses persons able and willing to give him work. Letters from such persons are valueless. The objectors will point out that the writers have not thought the matter sufficiently urgent for them to attend the hearing, and further that their evidence is worthless, for it is not subject to cross-examination. If it is available, evidence of witnesses who have applied for transport to the existing interests and been refused or made to wait unreasonable periods of time is very useful. It will be useful also if it can be shown that the applicant's place of business is close at hand to his proposed customers whereas the objectors would have to travel some distance in order to pick up the loads.

It may be possible to show that the applicant is at present having to run his vehicles uneconomically, and that this could be avoided if he were able to undertake other types of cartage or extend his journeys into areas which, under his existing licence, are prohibited to him. It may be that at the hearing the applicant will wish to alter the list of types of goods for the carriage of which he seeks a licence. This situation should be avoided, if possible, by including in the original application *every* type of goods which he may wish to carry, for at the hearing the Traffic Commissioner can "amend down" by deleting items, but cannot "amend up" by inserting new ones.

The proceedings will be commenced by the applicant's representative briefly opening the case, stating which type of licence is being applied for, and what type of goods are intended to be carried, and over what area it is proposed to operate. The applicant is then called and gives his name and the address of his business and its nature. Details should then be elicited as to his existing licensed vehicles, their user, the reasons for making the application, details of work which he has had to refuse, etc., and any special skill or knowledge which the applicant may have for the carriage of the goods in question (e.g., he may have some special skill in handling valuable antique furniture which is not possessed by his objecting rivals). The applicant will then be cross-examined by the representatives of each of the objectors in turn. If he has merely produced letters in support of his application he may be asked, for example, were they not supplied by the foreman of the firm and not by the proprietor, or did he not suggest the wording of the letters himself? After each cross-examination he can be re-examined by his own legal representative. The applicant's witnesses are then called and the same process of cross-examination and re-examination takes place. The Traffic Commissioner may himself, of course, question the applicant and any witnesses who are called. The objectors then submit their case and call their witnesses. Finally the applicant's representative replies. If the objectors have not called any witnesses *and he has*, he may point out that the former have merely put in a formal objection and called no evidence in support of it. He should deal with the points made against him by the objectors and then briefly recapitulate his own client's case.

If the application should be unsuccessful, an appeal lies to the Transport Tribunal. This tribunal is the old Railway Rates Tribunal renamed by s. 72 (1) of the Transport Act, 1947. By virtue of s. 73 of that Act it now exercises the functions formerly performed by the Road and Rail Traffic Appeal Tribunal—the date of transfer of jurisdiction being 15th August, 1951 (Road and Rail Traffic Act, 1933 (Transfer of Jurisdiction of Appeal Tribunal) (Appointed Day) Order, 1951 (S.I. 1951 No. 1467)).

Procedure before the Transport Tribunal is regulated by Sched. X to the Transport Act, 1947, and the Transport Tribunal Rules, 1949 (S.I. 1949 No. 989). The tribunal has all the powers of the High Court for the purposes of obtaining evidence, enforcing its orders, etc. Representation may be by counsel or solicitor, and the proceedings take the form of a re-hearing. The decision of the tribunal is final.

G. H. C. V.

The Hon. FELIX FRANKFURTER, a judge of the United States Supreme Court, has been elected an honorary Master of the Bench of Gray's Inn.

Mr. W. A. TILL, of Whitstable, Kent, has been appointed to the additional post of assistant solicitor in the Town Clerk's Department of the Taunton Borough Council.

A Conveyancer's Diary

COMPULSORY ACQUISITION BEFORE COMPLETION: PLEA OF FRUSTRATION

THAT there are certain kinds of contractual relationships which, in certain circumstances, become frustrated so that the parties thereto are relieved of their mutual obligations thereunder, has long been clear—at least since the doctrine of frustration was reformulated in the celebrated case of *Taylor* v. *Caldwell* (1863), 3 B. & S. 826. But what kinds of contract come within this doctrine, what are the circumstances in which it operates, and what is the jurisprudential basis of the doctrine, are questions to which the answers are by no means so clear. Attempts have been made in recent years to extend the doctrine of frustration to marriage and to leases, both contracts, if they are essentially that at all, of a very peculiar kind, but these attempts, though they have met with some approval in high places, have not so far been successful. As to the various explanations of the nature and justification of this doctrine, there is no unanimity among members of the judiciary (the rival theories are succinctly set out in Lord Simon's speech in *Constantine Steamship Line, Ltd.* v. *Imperial Smelting Corporation, Ltd.* [1942] A.C. 154), and it is perhaps this instability of the foundation on which the doctrine has been built up that makes its application so difficult in practice, and instances of such application often so unsatisfactory.

The latest reported case on frustration, *Hillingdon Estates Company* v. *Stonefield Estates, Ltd.* [1952] Ch. 627, is concerned with circumstances which make it of particular importance to the conveyancer. The contract between the parties was complicated because it dealt with the sale of various plots of building land, and provided for different dates of completion for the different plots, but the essential facts were very simple. By an agreement made in 1938 the defendants agreed with the plaintiffs to sell to the latter certain building land in Middlesex, and the agreement provided that the plaintiffs were to be entitled to take up the land in January, 1939. Owing to the war the land was not taken up by, or assured to, the plaintiffs, and the agreement remained unperformed. In 1948 the Middlesex County Council made a compulsory purchase order affecting the land, and in 1949 this order was confirmed by the appropriate authority. A few weeks after the confirmation of the order the county council served notices to treat on both the plaintiffs (the purchasers) and the defendants (the vendors). On these facts the plaintiffs claimed that they were discharged, on or before the date of the service of the notice to treat, from liability to perform any of the obligations on their part contained in the agreement, and they asked for a declaration that they had been so discharged, with ancillary relief. They did not ask for rescission of the agreement, but alleged that the agreement had been automatically frustrated by the events which had happened. The defendants counter-claimed for specific performance.

Vaisey, J., held that the agreement had not been so fundamentally frustrated as to discharge the parties from their mutual obligations thereunder, or indeed at all, and he accordingly rejected the plaintiffs' claim and made an order for specific performance on the defendants' counter-claim. This decision raises several interesting points, but perhaps the first thing to note is that the question which required decision in this case was completely untrammelled by authority. It is surprising, as the learned judge observed, that the effect of the service of a notice to treat between contract and completion, an event which must have happened in scores of cases since the end of the war, should never have been referred to the courts before this; but whether the complete absence of authority on the point warrants the inference, which the learned judge expressed himself as inclined to draw therefrom, that the doctrine of frustration does not normally operate in the case of contracts for the sale of land, is perhaps an open question. Much depends on what is meant by "normally" here, and in any case this is not one of the grounds on which the present decision was based.

These were two. The first was that, the date for completion being long past when the notices to treat were served, the plaintiffs were then the owners in equity of the land comprised in the agreement, and the interest of the defendants in the land at that time was not really an interest in the land at all, but an interest in the purchase-money agreed to be paid by the plaintiffs. The second was that the effect of the notices to treat had been merely to place an obligation on the persons who were already the owners of the land to which the notices related; they did not, therefore, affect the defendants, who had no interest in the land when the notices were served save in respect of the agreed purchase-money, but they did affect the plaintiffs, who were in equity the owners of the land. The learned judge referred, in this connection, to a passage from the judgment of Kindersley, V.-C., in *Haynes* v. *Haynes* (1861), 1 Dr. & Sm. 426, to the effect that a notice to treat creates, as between the acquiring authority and the owner of the land, to a certain extent and for certain purposes the relation of purchaser and vendor. In his view the owners of the land who were the notional parties to this notional contract were the plaintiffs, the owners in equity at the material time. On this footing it was impossible to say that the compulsory purchase order and the notices to treat had so altered the situation as to frustrate the agreement between the parties; there was no difficulty in completing that agreement by conveyance after the notices to treat had been served, and after such conveyance the plaintiffs would be no worse off than if they had completed the sale years before.

The crux of this decision, then, was the finding that at the material time, the date of the service of the notices to treat, the owners of the land were the plaintiffs and not the defendants. It is in this respect that the facts of this case may, perhaps, be to some extent peculiar, with the result that the decision as a whole may not necessarily be applicable to every case where a notice to treat is served between contract and completion. The rule that a person who has entered into a binding contract to purchase land is to be regarded as the owner of the land in equity is based on the old maxim, that equity regards that as done which ought to have been done: if the purchaser is treated in equity as being entitled to obtain specific performance of his contract, equity invests him with the equitable title to the property forthwith on the execution of the contract. Now in this case an interval of something over ten years had elapsed between the date fixed by the contract as the date on which the plaintiffs could take up the land in question and the service of the notices to treat, and although time had not been made of the essence either originally or (so far as one can see) at any time before the crucial date when the notices to treat were served, there was

no doubt in the learned judge's mind that by that date at least the defendants had become entitled to specific performance of the contract. It is of the essence of the remedy of specific performance that it should be available mutually or not at all, and so it follows that the plaintiffs, in this case, on this finding, were properly treated as the owners of the land in equity on the crucial date. But if time has not been made of the essence, and no long delay or other circumstance is available to raise a right to specific performance of the contract, as may often be the case, it would, I think, be at the least arguable that the present decision has no binding application to such a set of facts.

One further point on this interesting and important case may be noted. Counsel for the plaintiffs argued that the service of the notices to treat had created an incumbrance on the land. How this argument fitted in with the plaintiffs' plea that the contract had been frustrated is not at all clear from the report but, even if the state of the pleadings had admitted such an argument, the finding that the plaintiffs were for all material purposes the owners of the land at the date of the service of the notice could not but render this argument irrelevant. But such an argument may not be irrelevant in another case if I am right in my suggestion that it is not every purchaser who is the owner of the land in equity at the crucial date, and if that is so then it may one day be necessary to develop this argument rather further than it appears, from the note of the arguments in the Law Reports, to have gone in the present case. A notice to treat, once served, cannot normally be withdrawn (*Tawney* v. *Lynn and Ely Railway* (1847), 16 L.J. Ch. 282). In this respect then, there seems to be a close analogy between a notice to treat and an option to purchase, the creation of which in favour of a third party between contract and completion would, subject to the necessity of registration, certainly create an incumbrance and so justify a purchaser in rescinding the contract.

"A B C"

Landlord and Tenant Notebook

ABUSIVE PROTECTED TENANT

APPLYING the principle that protection attracts allegiance, the House of Lords dismissed, in *Joyce* v. *Director of Public Prosecutions* [1946] A.C. 347, the appeal of an alien, who had applied for and been granted a British passport, against his conviction of treason. The principle finds some recognition in the law of landlord and tenant: on the tenant doing any act which amounts to a repudiation of the relationship of landlord and tenant, by setting up title in himself or by attorning to a third party, the landlord may treat the tenancy as disclaimed or forfeited (*Doe d. Gray* v. *Stanion* (1836), 1 M. & W. 695); and the Law of Property Act, 1925, s. 145, obliges every lessee to whom there is delivered any writ for the recovery of the demised premises, or to whose knowledge such writ comes, to give notice thereof to his lessor, who, in default, may claim an amount equal to the value of three years' improved or rack-rent of the premises.

But, as appears from the decision in *Liffen* v. *France*, reported shortly but adequately in *The Times* of 9th October, if this principle operates at all in the case of tenants protected by the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, it does not do so to the extent of availing a landlord whose tenant uses bad language and tries to snatch back rent which he has just paid. Nor did the Court of Appeal agree with the county court judge who had held that there was an implied term in the tenancy agreement of a flat that rent should be paid in a peaceable and orderly manner.

The finding that any such obligation had been broken was based on the facts that whenever the plaintiff landlord, who sued for possession, called to collect rent, the defendant behaved in an abusive and insulting manner, using bad language, offering rent in small change, and doing all he could to annoy the landlord. (I do not know how his capacity was measured, but that is rather a detail.) And the plaintiff relied on the first two paragraphs of Sched. I to the Rent, etc., Restrictions (Amendment) Act, 1933, authorising a court to grant an order for possession, notwithstanding that no suitable alternative accommodation was or was about to be available, if (*a*) any rent has not been paid or any other obligation of the tenancy . . . has been broken or not performed; (*b*) the tenant is guilty of conduct which is a nuisance or annoyance to adjoining occupiers.

Somervell, L.J.'s judgment made a number of points. One was that if the conduct of the tenant at the time of payment of rent was improper the landlord might have a remedy "by criminal proceedings or otherwise." His lordship may have had in mind a summons to show cause why the tenant should not be bound over to keep the peace or to be of good behaviour—no doubt such proceedings would be available; and if the rent was such that the number of sixpences necessary to make up the figure was not legal tender for the amount, presumably the landlord could refuse to accept them and rely on para. (*a*).

But the learned lord justice's next suggestion was, I think, rather more controversial. "Here the landlord could have given up calling for the rent and told the tenant to bring it to the landlord's house, but he went on collecting it." Leaving aside, for the moment, practical considerations, I submit that the authorities on the question whether, in the absence of a covenant to pay rent, the tenant is obliged to bring or send the payments to the landlord, are in a most unsatisfactory state. It is some years since the "Notebook" examined the problem (on 4th March, 1944: 88 SOL. J. 82), but there has been no elucidation since. Coke and Comyns were resorted to, besides a number of reported decisions which might throw light on the matter; for present purposes, suffice it to say that support would be found for the proposition stated by Somervell, L.J., in *Iggulden* v. *May* (1804), 9 Ves. 325. But that case was not concerned with "weekly property" and the practice of sending for the rent of such is so universal and so much more likely to produce results that some courts would be inclined to consider it *prima facie* part of the tenancy agreement that the landlord or his collector should call.

I do not suggest, of course, that this view of the place-of-payment position made any difference to the result; it suffices for para. (*a*) that the rent is paid, and if payment is accompanied by insults in one place, so it might be in another, and the tenant might resort to threepenny pieces as well. And even if the place of payment is the demised premises, this could hardly adequately support a contention that para. (*b*) applied to the situation. "The provision in the Act that possession could be granted if the tenant had been guilty of conduct which was a nuisance or annoyance to adjoining occupiers had no application as between landlord and tenant as such," is the way the judgment put it; and even if it were the law that the landlord was bound to come to the flat whenever rent was due, or go without it, the suggestion that

that made him an adjoining occupier would be quite untenable. The paragraph is, no doubt, inserted in order to provide for those cases in which a tenancy agreement is silent on the subjects of nuisance and annoyance; the importance of the "adjoining occupiers" was emphasised not long ago by *Frederick Platts Co.* v. *Grigor* (1950), 66 T.L.R. (Pt. 1) 859 (C.A.), in which it was held that, however annoying a tenant's conduct might be according to accepted standards of human behaviour, a judge is not entitled to infer that adjoining occupiers who are not called as witnesses have been annoyed.

Another recent decision in favour of a tenant gave effect to the words "of the tenancy" which qualify the word "obligation" in para. (*a*) (*R.M.R. Housing Society, Ltd.* v. *Combs* [1951] 1 K.B. 486 (C.A.)). A written tenancy agreement provided that the tenancy was conditional on the grantee remaining in the employment of *X, Ltd.* (an associated company); the Court of Appeal held that, to be an "obligation of the tenancy," the obligation must be binding on the tenant "as tenant, and not merely binding on him as an individual," and that the condition did not create such an obligation. Conceivably a covenant to pay rent in a peaceable and orderly manner would be held to be an obligation of the tenancy; and while it is too late for the unsuccessful plaintiff-respondent in *Liffen* v. *France* to do anything about it now, those concerned with lettings of controlled dwelling-houses may profit by his experience and make apt stipulations accordingly.

R. B.

HERE AND THERE

NEWER OLD BAILEY

In doubt, difficulty, or danger, one of the main pillars of English morale is the recurrent reflection: "Well, we musn't grumble." And, even during the bombardments of London, when grace and history and tradition were vanishing on every hand in the terrible beauty of the consuming flames, there were certain aspects of the holocaust at which the sensitive felt not the least inclination to grumble. The void that the blank, bleak, Victorian brickwork of Elm Court left in the Temple was by no means an aching void. The unspeakable gloom of old Harcourt Buildings was most happily dissipated in their destruction. The heavy-handed Gothic of the eighteen-seventyish Inner Temple Hall marked it as eminently "expendable" (as the saying went). If Lamb's better half of Crown Office Row was worthy of the mourner's tear, at least the newer, solider, nastier half, tacked on to it on the west, vanished first. In those days if any earnest persons had been going about allotting priorities of expendability to the more obvious public buildings, surely (architecturally speaking) the Central Criminal Court would have deserved a fairly high place. When the grim, gloomy, squalid, haunted pile of old Newgate was pulled down, there was doubtless a lot to be said for the hygienic reaction of building its successor round a ventilation system ingeniously honeycombing the recesses of the structure. There was a good deal less to be said for the somewhat manufactured air of Edwardian brightness (shared with the contemporary banks and insurance buildings) in its interior design, while the precise symbolic significance of the prancing nudes in the decorative scheme were a constant puzzle to the thoughtful visitor. As for the dome, with the top-hamper of its over-big, over-gilded Justice, imprudently challenging comparison with Wren's master touch a street's length away, it suggested in that context nothing so much as a mongrel puppy of uncertain paternity. Well, it so happened that though the German bombers bit away an enormous chunk of the building on the Newgate Street side, the main structure has survived to be repaired at an ultimate cost of half a million. And now the first stage of the restoration is complete and the new north-west corner has been officially opened at a ceremony attended by the Lord Chief Justice, the Lord Mayor, divers of Her Majesty's judges and Sir Travers Humphreys, for memory's sake. It is, said Lord Goddard, the greatest assize court in the country and should be taken as a model to many other courts. He recalled how the Old Bailey functioned all through the attacks on London, as did all the courts in England. There was never a day during the war when a court, somehow or other, was unable to sit at the time appointed. As a footnote the curious may observe that the courts which heroically defied the foreign foe and the invaded sky have not always been able to stand up to the horrors of peace. Recently a case at the Old Bailey had to be adjourned because of the noisy racket of current building operations. And while the Law Lords never shifted from their Chamber for bombs or rumours of bombs they were finally driven out by the irresistible force of post-war pile-driving under their window, so that in our casual English way the pile-drivers may be said to be the true begetters of that interesting if perilous constitutional experiment, which has apparently become a permanency, of hearing appeals in Committee instead of in the House of Lords itself.

RODENT INTERLUDE

Well now, there you've got your new model assize court for London and in its setting you have Hilbery, J., presiding, the image of judicial elegance. And what happens? Up from the rotten-planked, rat-riddled past pops a survivor and an anachronism. Sitting on a ledge, surveying the splendid present (as if one of the characters from "The Beggar's Opera" should suddenly appear to revisit the glimpses of the moon in the new Old Bailey), a large rat was following the proceedings, doubtless with the intelligent interest characteristic of its kind. If it made comparison with the good old days its forbears knew in that same place, the wigs and robes and gowns would strike an ancestral chord of memory and so would the occupant of the dock who, regrettably out of touch with the best contemporary thought, had slashed a woman's face with a knife. (Similarly, in the pleasing intellectual fantasia of the Festival Gardens, only the human element is intractable to modern design and the poor old public, amid the gay pavilions, looks much the same as it always does on a grey afternoon in the Euston Road.) The man who had slashed the woman's face got four years. In rougher times he would have had rougher handling, but if the rat imagined that it had strayed into an age of non-violent authority it was soon disabused. For though a cat may still look at a king, it would appear to be a capital offence for a rat to look at a judge; clearly that is in itself a contempt. Without trial by its peers (what a theme for the late Beatrix Potter that would have made!) it was judicially condemned unheard to "the appropriate penalty" and the court adjourned while six men with wooden slats did execution on the poor anachronistic intruder. An exhilarating interlude, but not on the grand scale of an incident in the magistrates' court at Bishop Auckland a few years ago, when the heating apparatus was turned on at the start of winter. Hordes of rats, who had been raising their families behind the pipes all the summer, burst into the open, swarming wholesale all over the room. Business was suspended and the hunt was up, everyone participating save the massive superintendent of police, who, solid as a rock amid tempestuous seas, sat on in his place. But his trousers were wide to match his frame and one large old rat, spying, as it thought, a refuge, bolted up the leg, scrambling

higher and higher with tooth and claw, while, not without pandemonium, the superintendent bolted for privacy into the justices' room. So at the Old Bailey the court did well to adjourn; it would have been embarrassing indeed had the fugitive offender chosen to seek sanctuary in the very seat of justice. All the same, whether by the standards of contemporary thought or ancient precedent, the poor beast might well have expected other treatment. The truly modern method would have been to fill up several forms in triplicate supplicating the attendance of the august official now generally known as a rodent operative. The Middle Ages, in the Hamelin tradition, would doubtless have despatched it with musical honours. On the other hand, had Stable, J., been the presiding judge, with his dog in attendance, it would probably have gone off in a blaze of glory in single combat.

RICHARD ROE.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Time in Contracts for Sale of Houses

Sir,—It is my belief that in the House of Lords and in the Supreme Court we have a very fine set of judges; but these eminent lawyers are far removed from the everyday world of the practising solicitor up and down the country and every now and again there occur in the case reports examples of astonishing naivety and misapprehension as to what really goes on in the world the humble and unhonoured provincial solicitor knows so well.

I am sorry to say I detected a touch of this unrealism in the article "Time in Contracts for the Sale of Houses" contributed by H. N. B. to THE SOLICITORS' JOURNAL [*ante*, p. 658], although of course to some extent this follows inevitably from the decisions which he is reviewing.

I have for many years been baffled by the almost contemptuous manner in which the judges have dismissed the question of the time for completion of a sale and purchase (except, for some strange reason, licensed premises or shops sold as a going concern) as a factor of very minor importance. How I would like to get these judges in my office chair and let them deal with my vendor and purchaser clients of vacant possession houses. "When can I tell the removal men to call?" "Will it be all right to arrange with the Gas and Electricity Board for Saturday week?" I don't know what answer the learned jurists would give but if they embarked upon a homily to explain that "time is not of the essence" I can forecast the lines, and the tone, of the client's rejoinder.

If one accepts all the careful warnings of H. N. B. it would seem almost impossible to frame a satisfactory contract on behalf of a vendor short of stipulating from the outset that time is to be of the essence, which would not in many cases be desirable. But I do not think the picture is quite so gloomy as it has been painted. When contracts are exchanged there is invariably a suggested completion date—usually three, four or five weeks ahead in the case of a straightforward house purchase. I do not think it is right to assume that this date is of no importance; true it is only a provisional completion date but it is nevertheless based upon the parties' deliberate estimate of the time they will require in which to make their arrangements. When that date has passed surely it is unreasonable to cast upon the vendor an onerous obligation to prove "improper" delay. Is not any delay *prima facie* "improper" in the sense that the purchaser has overrun the stipulated period? H. N. B. suggests that delay on the part of a purchaser would not be improper if it should be due to attempts to obtain a mortgage or to effect a sub-sale. Should not a provident man make sure of his finances before committing himself to purchase? And if this is not possible should he not stipulate for a reasonable period *between* contract and completion date for this purpose? As to sub-sale, is the vendor to be restrained until his purchaser has been able to ensure for himself a middle-man's profit on the deal?

With all respect to H. N. B. and Her Majesty's judges it seems to me ridiculous to suggest that the vendor must wait until the completion date according to the contract is well past and then serve a two or three months' notice.

We have become accustomed to two or three weeks and often a longer period of "parleying" before contracts are actually exchanged. If we have to add to that four or five weeks to completion date and then allow two or three months default before forfeiting the deposit and starting the whole process again with another possible purchaser, I must say that I prefer the world in which we country bumpkins operate to the Alice in Wonderland spheres suggested by some of the decided cases.

"COUNTRY SOLICITOR."

REVIEWS

A History of English Law. By the late Sir WILLIAM HOLDSWORTH, O.M., K.C., D.C.L., Hon. LL.D. Volume XIII. Edited by A. L. GOODHART, K.B.E., Q.C., D.C.L., LL.D., and H. G. HANBURY, D.C.L. 1952. London: Methuen & Co., Ltd. £3 10s. net.

The penultimate instalment of Sir William Holdsworth's monumental labour appears under the editorship of his literary executors. They tell us in the preface that the volume is all Holdsworth's own except for about five pages of critical appreciation of two of the many works of practice which qualify for comment in the author's scheme. In the layout of that scheme, vol. XIII comprises chap. IV of Pt. I of Book V, and is to be understood as part of the treatment of the Sources and General Development of our law in the eighteenth and nineteenth centuries—"Centuries of Settlement and Reform." The period covered in its 700 pages is one of about forty years culminating in the Reform Act, 1832, and leaving about the same span of time still to be digested to bring the narrative up to the date of the Judicature Acts, which was the finishing point of Holdsworth's plan.

To any daily breadwinner who wonders why a work of historical research, even one of a world-wide repute, should be commended to him in the columns of a practical journal such as this, we would repeat the citation from Roger North which stands on the title page of the History: "To say truth, although it is not necessary for counsel to know what the history of a point is, but to know how it now stands resolved, yet it is a wonderful accomplishment, and, without it, a lawyer cannot be accounted learned in the law." This applies, in the present context, more to those parts of Holdsworth which deal specifically with rules of law. In the more general portions of the author's survey, as exemplified in the new volume, points of law are discussed not for their own sakes but as incidents in biographical analysis and in the factual account of events and trends upon which the writer bases his succinct commentary. (Historians in other fields should note how the authority of Holdsworth's work is enhanced by his economy of statement.) Similarly, reported cases figure chiefly as illustrations of, or landmarks in, the work of advocates and judges. Nevertheless, it is not good for any practitioner, however urgently everyday affairs may press upon him, to cut himself off from the foundations of his mystery and from the example of those who have shaped its present form. No one who reads Holdsworth—and how readable he is!—will complain if the consequent accretion to his professional skill and knowledge is mainly of an intangible kind.

A little over a hundred pages are devoted to the principal constructive statutes of the period. For the rest, the author treats contemporary ideas of legal reform, the legal literature of the time and the political background largely in a series of biographical sketches of which the most considerable is that of Bentham. Needless to say, these sketches are uniformly masterly in their comprehensiveness and relevance.

The crowning felicity is surely the unobtrusive incorporation of knowledgeable or contemporary authority for every estimate of character or personal idiosyncracy.

The index of names shows some peculiarities. References to Addington (e.g., p. 174) are not listed under his title of Lord Sidmouth; Lord Abinger was not P. C. Scarlett, but James Scarlett. Holdsworth himself seems to have overlooked all editions of Archbold's Criminal Pleading subsequent to 1931. But the subject index and the detailed table of contents are valuable aids to quick reference.

Oyez Practice Notes, No. 31: Legitimacy and Legitimation. Revised Reprint. By A. L. POTEZ, B.A., of the Middle Temple, Barrister-at-Law. 1952. London: The Solicitors' Law Stationery Society, Ltd. 6s. 6d net.

This small volume is one of the series known as the "Oyez Practice Notes," a series designed to provide practical assistance to the legal profession in dealing with questions which frequently arise, but the answers to which are not otherwise readily accessible. The principal sections into which the book is divided deal successively with legitimacy, legitimation, the effects and consequences of legitimacy and legitimation, respectively, and the procedure for raising these questions in the court, and the full enumeration of these topics is sufficient to show that, if they had not been gathered together here, reference to many books would be necessary to acquire the knowledge of this rather forbidding and difficult subject with which the learned author provides his readers in forty-eight pages of text. The author's views on controversial questions, such as the law to be applied in determining in our courts whether a person is legitimate or not, are essentially practical, and purely academic speculations on subjects which offer tempting opportunities for such speculation are rigidly avoided. It is remarkable how space has been found for the statement of opposing views where the law, as declared by the court, is none too clear, and judicious excerpts from reported judgments assist the reader to recognise both the difficulties of many of the questions discussed, and the rationale of the proffered solution. Inevitably, the degree of compression required to pack a reasoned statement of the law on so large a subject into so small a space has led the author into writing which is on occasions less than elegant ("... the child is not to be regarded as being the child of the man according to the law of whose country the question has been decided"—p. 8), and sometimes positively obscure (e.g., the summary of *Re Adams* [1951] Ch. 716 on p. 32); and the statement on p. 21 that an illegitimate person cannot normally succeed to property on an intestacy under the Administration of Estates Act, 1925, is unintelligible. But taken as a whole, this is a useful and accurate summary of the law with which the author sets out to deal, and the value of the book is increased by the printing of the relevant statutory law in an appendix, and the suggested forms also given there for petitions for declarations of legitimacy and legitimation.

Codd's Last Case. By A. P. HERBERT. 1952. London: Methuen & Co. 10s. 6d. net.

Many of us are far more familiar with Herbert's Cases than with Fitzherbert's Abridgement, having grown up in the law with his works rather handier on the shelf than, say, Hurlstone and Norman's. It is a long time now since this industrious reporter first began to work his own individual vein of legal research, yet in all the professional and professorial discussions that have regularly anatomised the imperfections of the various current methods of law reporting, his reports have never incurred any adverse criticism at all. It may well be that if present trends towards amalgamation, absorption and suppression continue, they may soon be the sole surviving independent series, and very proper too, for so unwearied a champion of personal freedom.

The present volume, comprising reports published singly over a period of about fourteen years, will be welcomed as warmly as its predecessors. The case from which it takes its title, Codd, J.'s summing-up, on the eve of his retirement, at the trial of a householder who has killed a burglar, is vintage Herbert. In some of the other cases, perhaps a certain weightiness of manner is perceptible as if the shades of the Parliament House had somewhat clouded the old original hilarity, but A. P. H. is free again, and it is worth noting that "Codd's Last Case" is Herbert's latest case, so the future seems secure. The future certainly needs these reports in which the innumerable insidious encroachments of Whitehall on personal freedom and human dignity and responsibility are displayed with all due irreverence in the light of day where they belong.

TALKING "SHOP"

MONDAY, 13TH *October*, 1952.

Mr. H, who has been paying his mortgage interest without deducting the tax, shows me some sultry correspondence with his lenders who decline—rightly it seems in law—to permit him to repair the error by deduction against future interest payments. The inspector of taxes, for his part, declines to allow Mr. H to charge the mortgage interest against his income for taxation.

Since the lenders describe themselves on their notepaper (*inter alia*) as "merchant bankers," we look at s. 200 of the Income Tax Act, 1952, familiar as the passport to repayment of tax on bank interest. Something might certainly be made of it, but the section says nothing of "merchant bankers"; the phrase is "a bank carrying on a *bona fide* banking business," thus cleverly contriving to suggest that an institution may remain a bank though it carries on a *mala fide* banking business, whatever that may be.

"It cannot be called a definition, it is more like a helpless appeal for a definition." This was how "an eminent banking authority" stigmatised the same term used in s. 30 of the Finance (No. 2) Act, 1915; I take the quotation from Sir John Paget's book.

In *Davies* v. *Kennedy* (1869), I.R. 3 Eq. at p. 693, Christian, L.J., applied the familiar judicial test. "Was the business carried on what the ordinary intelligent commercial man would call a trade or business of a banker?" This would be splendid if there were any means of telling what views the ordinary intelligent commercial man holds on this subject.

THURSDAY, 16TH

Solicitors spend so much of their time answering questions that it is as well to recognise the difficulty of answering deceptively simple questions. The point has been well taken by a contributor to the *Law Society's Gazette* in an amusing article wherein he attributes to examiners a partiality for questions such as "What is law?" and "Is there enough law to go round?" Half an hour with any child of six will prove the point. What is electricity? Why is grass green? How did the elephant get his trunk? The span is wide, from Rudyard Kipling to music-hall. Where do flies go in the winter time, and do shrimps make good mothers?

The deceptively simple question that I have in mind arises from the familiar division of functions between custodian and managing trustees, and arises in this way. Executors, having completed the administration of their testator's

estate, desire to appoint managing trustees and to vest the real estate in a custodian trustee as empowered and directed by the will. Firm A prepare a draft assent vesting the property in the custodian trustee upon trust for sale with power to postpone. Firm B object that the power of postponement is an important discretion and by s. 4 (2) (*b*) of the Public Trustee Act, 1906, "the exercise of any discretion exercisable by the trustees under the trust shall remain vested in the trustees other than the custodian trustee." Firm A then amend the draft giving Tweedledum (trust for sale) to the custodian trustee and Tweedledee (power of postponement) to the managing trustee. This is altogether too much for Firm B, who think that the fractious brothers ought not to be separated.

After much fruitless searching through precedent books a formula is evolved whereby the property is vested in the custodian trustee "as custodian trustee," with a declaration that the managing trustees are invested with the trust for sale *and* the power to postpone sale.

The first part of this formula may to some small extent be justified by reference to s. 110 (5) of the Settled Land Act, 1925, since the property was formerly subject to a vesting instrument. When the conditions of the subsection are satisfied, a purchaser may act upon certain assumptions; these include the assumption that the person in whom the land is vested takes beneficially "or if so expressed in the conveyance or assent, as personal representative or trustee for sale *or otherwise*."

FRIDAY, 17TH

The Estate Duty Office seem to show a marked preference nowadays for acceptance of legacy or succession duty on the value of a life or other limited interest. Nor is this surprising, since acceptance of duty on the capital may leave claims outstanding for set-off against future estate duty under s. 29 of the Finance Act, 1949.

It is better perhaps on principle that the files should be closed and few may regret the passing of these duties which were so troublesome in relation to the amounts involved. None the less, it occasionally becomes necessary in the interests of a client to press the view that the proper mode of payment is from capital. Should the argument wax furious, as it has done in some recent cases over many months, the delay may sometimes console a sur-tax-paying tenant for life, who, by some anomaly of statute law, is permitted, in calculating his income for sur-tax purposes, to deduct instalments of legacy duty falling due before the administration is concluded,[1] but not (it seems) those falling due afterwards. This may carry some practitioners back to the days when it was considered bad form to submit a residuary account except after ordinate or inordinate delays, for on the case law decided before the passing of Pt. III of the Finance Act, 1938,[2] income of the estate accruing prior to the date of retainer was not normally sur-taxable in the hands of the residuary legatee.[3]

WEEK-END REFLECTIONS

Re Costs: Some talk of Alexander (four years of toil and not a penny on the scale) and some of Hercules (down pens and boycott legal aid!). Amidst the turmoil a thought may be spared for members of the Council of The Law Society. If "ambivalence" means—as an evening paper states—"the simultaneous operation in the mind of two irreconcilable wishes," then by now Committee members charged with the problem of solicitors' remuneration must be quadrivalent or worse. Should one attempt to follow such a member's progress through the day, it is easy to understand why. In the train: benevolent approval bestowed upon the Government's policy of wage restraint as reported (let us say) in *The Times*. In the office: a certain lack of enthusiasm for rising overheads and stunning taxation. In Committee: to breathe the pure serene of long-term policies best calculated to serve the profession's true interests, etc. Finally a Council meeting: to hear the hecklers incontinently demanding *results*.

This diarist hazards the view that the antique costs system is but a part of the cramped accommodation in the house that Jack built. The whole structure should be condemned; the profession should move into a house with modern conveniences and become master in it. No profession but our own—ever pre-occupied with other people's problems and patient to a vice—would so long have suffered the indignities of the strait jacket. It is impossible to believe that a system is right that requires us to wait by "strong deputation" upon the Lord Chancellor to discuss our six and eightpences. What is he to Hecuba or Hecuba to him? If we are competent to administer a national enterprise of the scope of legal aid, we are surely competent to fix our own fees.

As for the system of taxation, even the name has a musty smell. Ask a client what he thinks of taxation and he will tell you that it is 9s. 6d. in the £; nor will he be far out in that, for you must double your figures so that the taxing master may halve them. We may perhaps look forward to the time when The Law Society will fix the fees in litigious as well as in non-litigious matters, and, with proper safeguards of appeal, regulate and administer the whole business from A to Z.

"ESCROW"

1. Section 423 (10) read with s. 418 (3) (*a*) of the Income Tax Act, 1952; cf. (for absolute interests) s. 419 (2), *ibid.*; see also Simon's Income Tax, vol. 3, at p. 199, and (for an interesting comparison with pre-1938 case law) *Colville* v. *C.I.R.* (1923), 8 Tax Cas. 442.
2. Replaced by Pt. XIX of the Income Tax Act, 1952.
3. At least, if absolutely entitled: *Herbert* v. *C.I.R.* (1925), 9 Tax Cas. 593.

OBITUARY

MR. C. J. HAYDON

Mr. Clement John Haydon, retired solicitor, formerly of Bournemouth, died at Cartmel on 26th September, aged 91. Admitted in 1882, he was clerk of the peace for Bournemouth from 1900 to 1942, and served for six years on Bournemouth Town Council.

MR. E. H. H. KING

Mr. Edwin Horatio Herschell King, solicitor, of Bath, died on 9th October, aged 76. He was admitted in 1917.

HIS HONOUR H. M. STURGES, Q.C.

His Honour Hugh Murray Sturges, Q.C., died on 12th October, aged 89. He was called by Lincoln's Inn in 1889, took silk in 1912 and was appointed county court judge of Circuit No. 4 (North Lancashire) in 1913. He was appointed to West London County Court in 1921 and retired in 1929. He was also successively Recorder of Tewkesbury and Windsor and chairman of Hertfordshire Quarter Sessions, and was a Bencher of Lincoln's Inn and treasurer in 1945.

MR. J. D. VENN

Mr. John Dalton Venn, retired solicitor, formerly of Old Broad Street, London, E.C.2, died at Bexhill-on-Sea, on 11th October, aged 84. He was admitted in 1891 and was a Past Master of the Worshipful Company of Scriveners.

MR. H. WINNETT

Mr. Howard Winnett, solicitor, of Gravesend, died on 11th October. He was admitted in 1901.

NOTES OF CASES

COURT OF APPEAL

INCOME TAX: TRAVELLING EXPENSES: BARRISTER

Newsom v. Robertson

Somervell, Denning and Romer, L.JJ.
14th October, 1952

Appeal from Danckwerts, J. (p. 313, *ante*).

The taxpayer, a practising member of the Chancery Bar, was in term time in the habit of taking work to his home at Whipsnade, where he had a set of law reports and textbooks, and of continuing to work at home after dinner. During the vacation, papers were sent to his home from chambers, and he went to chambers only for conferences. He claimed to be entitled to deduct £137 a year as travelling expenses to and from his home and his chambers. The Special Commissioners disallowed the claim so far as relating to term time, but allowed it so far as relating to the vacation. Both parties appealed, and Danckwerts, J., disallowed the claim completely. The taxpayer appealed.

SOMERVELL, L.J., said that a professional man might carry on his profession at more than one place, e.g., a solicitor might have an office in London and another office in Reading and might require to travel back and forward between them. But in this case the appellant's house at Whipsnade was his home and had really nothing to do with his profession, notwithstanding that he might do work there in the evening.

DENNING, L.J., said that the appellant's home at Whipsnade was not the base of his professional operations; both in term time and in vacation the professional base of the appellant was his chambers in Lincoln's Inn, and the appeal, therefore, failed.

ROMER, L.J., gave judgment to the same effect. Appeal dismissed; leave to appeal to the House of Lords refused.

APPEARANCES: *J. Millard Tucker*, Q.C., *J. W. P. Clements* and *L. Abel-Smith* (*Darley, Cumberland & Co.*); *F. Heyworth Talbot*, Q.C., and *Sir Reginald P. Hills* (*Solicitor, Inland Revenue*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

QUEEN'S BENCH DIVISION

ROAD TRAFFIC: SCALE OF PENALTIES FOR DRIVING AN UNLICENSED VEHICLE

Holland *v.* Perry

Lord Goddard, C.J., Finnemore and McNair, JJ.
14th October, 1952

Case stated by Surrey justices.

Section 15 (1) of the Vehicles (Excise) Act, 1949, provides that a person driving a mechanically propelled vehicle for which a licence under the Act is not in force "shall be liable to . . . (*b*) an excise penalty equal to three times the amount of the duty chargeable in respect of the vehicle . . ." Section 1 provides that "(*a*) there shall be charged in respect of mechanically propelled vehicles . . . duties of excise . . . and (*b*) the duty . . . shall be paid annually . . ." By s. 5 and the Fourth Schedule annual scales of duty are set out. By s. 11, notwithstanding s. 1 (*b*), a licence may be taken out for such periods of the year at such rates as the Minister may prescribe; pursuant to that section and a statutory instrument made thereunder, a licence may be taken out for any period of the year commencing before 1st October and expiring on 31st December, and for any quarterly period; and if a licence is taken out to be current only in the last month of a quarter, a proportion only of the quarterly payment is required. The defendant pleaded guilty before the justices to driving an unlicensed vehicle, in respect of which the annual duty was £30, on 16th December, 1951. There was no evidence that he had used the vehicle on any other day, or as to when he acquired the vehicle, or as to whether he had taken out quarterly licences earlier in the year. He had previously been convicted of a similar offence. The justices held that the "duty chargeable in respect of the vehicle" under s. 1 was the duty chargeable for the December quarter, namely, £8 5s., and not the full annual duty. They exercised their discretion under s. 78 of the Excise Management Act, 1827, which authorises them in the case of a second offence to mitigate the penalty to not less than one quarter, and imposed a penalty of £12. The prosecutor, who contended that the minimum penalty was one quarter of three times the full annual duty, i.e., £22 10s., appealed. The defendant did not appear.

LORD GODDARD, C.J., said that "the amount of duty chargeable in respect of the vehicle" in s. 15 must be *prima facie* the annual duty; but if a person took advantage of s. 11, and took out periodic licences for less than the year, the duty chargeable would only be so much of the annual sum as had not been already paid. He would require to give evidence as to that, but that would work no hardship or injustice. The same considerations would apply in the case of a defendant who first acquired the vehicle unlicensed in the material year; he would be liable in respect of the duty payable from the date of purchase until the end of the year; he could not be heard to say that he would have licensed it only for the initial quarter after purchase. In the present case, in the absence of any evidence such as indicated above, the *prima facie* rule applied, and the penalty must not be less than £22 10s., one quarter of three times the annual rate of duty.

FINNEMORE and MCNAIR, JJ., agreed. Appeal allowed.

APPEARANCE: *J. P. Ashworth* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

TOWN AND COUNTRY PLANNING: PROSECUTION FOR DISREGARDING AN INVALID ENFORCEMENT NOTICE

Mead *v.* Plumtree

Lord Goddard, C.J., Finnemore and McNair, JJ.
15th October, 1952

Case stated by Essex Quarter Sessions.

The defendant was convicted before petty sessions of the offence of disregarding an enforcement notice issued pursuant to s. 23 of the Town and Country Planning Act, 1947, on 27th June, 1951, which required him to discontinue the use of certain land "within 56 days after the service of this notice," with a footnote "not less than 28 days." The defendant appealed to quarter sessions, contending that no offence had been committed, as the notice was bad in view of the decision on 19th February, 1952, of the Court of Appeal in *Burgess* v. *Jarvis* [1952] 2 Q.B. 41; *ante*, p. 194, in which it was held that an enforcement notice must specify two periods: the first, under subs. (3), at the end of which it was to take effect; and the second, under subs. (2), prescribing the time within which the specified steps were to be taken, such periods being consecutive. Quarter sessions dismissed the appeal, holding that they had no jurisdiction to entertain it, as the case was covered by *Perrins* v. *Perrins* [1951] 2 K.B. 414. The defendant appealed.

LORD GODDARD, C.J., said that s. 23 could only be construed in one way, as requiring two consecutive periods to be specified by an enforcement notice if it was to have validity. He entirely agreed with the decision in *Burgess* v. *Jarvis*, *supra*, and in any case would not have ventured to disagree with it when dealing with a criminal matter. The notice in question was obscure, and did not specify the two periods required; it was accordingly invalid. The rights of appeal given by s. 23 (4) were concerned with the merits of what was required to be done by the notice, and not with the validity of the notice itself. The defendant was entitled to treat it as null and void, and to contend before the justices that no notice had ever been served. In *Perrins* v. *Perrins* the defendant had sought to attack the notice on the merits, and that could only be done by an appeal under s. 23 (4); that case was quite different. The case must go back to quarter sessions with intimations, first, that they had jurisdiction to hear the appeal, and, secondly, that they should allow it.

FINNEMORE and MCNAIR, JJ., agreed. Appeal allowed.

APPEARANCES: *P. Lamb*, Q.C., and *L. Jellinek* (*Robbins, Olivey & Lake*, for *W. P. Hill*, Hertford); *F. W. Beney*, Q.C., and *V. G. Hines* (*Torr & Co.*, for *Stamp Wortley & Co.*, Chelmsford).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

HABEAS CORPUS: FUGITIVE OFFENDER

R. *v.* Governor of Brixton Prison; *ex parte* Penn

Lord Goddard, C.J., Finnemore and McNair, JJ.
15th October, 1952

Application for a writ of habeas corpus.

The applicant served in the Indian Civil Service from 1945 to 1947, when he left India. He was committed to prison in September, 1952, by the Bow Street magistrate on two warrants addressed to him by a magistrate in Assam, ostensibly under the provisions of the Fugitive Offenders Act, 1881; these warrants

charged the applicant with criminal misappropriation and criminal breach of trust as a public servant, and with illegally dealing with arms and ammunition. The warrants stated: "You are hereby directed to arrest the said Captain Penn and produce him before me. Herein fail not." On application to the vacation judge, the applicant was released on bail pending the decision of the Divisional Court on his application.

LORD GODDARD, C.J., delivering the judgment of the court, said that it was as unsatisfactory a case as had ever come before the court. If the authorities in India wished to make use of the Act, they should understand it and act in accordance with it. It was their duty to issue a warrant and send it to an English court for indorsement, whereupon it became an effective authority for the arrest of the fugitive. To address the Bow Street magistrate in such language, and to direct him to go out and arrest an offender, which it was not his business to do, was almost an insult. If such a warrant was sent again, it was to be hoped that the magistrate would ignore it. As to the merits, there was no evidence whatever that the applicant had committed the offences charged. The charges of misappropriation and breach of trust rested on the allegations of certain merchants, whose cloth he had confiscated and sold according to law and in pursuance of his duties, that the sale price was at such an under-value that he must have pocketed some of the proceeds. It could not be expected that a forced sale by a person unconnected with the cloth trade would realise a good price. As to the arms charges, there was no evidence whatsoever to support them, and further, public servants were exempted by the Indian Penal Code from the provisions on which the charges were based. The accusations went to the height of absurdity in charging the applicant with forging his own signature on arms licences. A peremptory writ was issued, and the applicant, who was in court, was told to go. Costs were awarded against the High Commissioners for India. Application granted.

APPEARANCES: *G. D. Roberts*, Q.C., and *F. Elwyn Jones* (*E. Gordon Lawrence*); *Christmas Humphreys* and *J. Averill* (*Stanley & Co.*); *R. E. Seaton* (*Director of Public Prosecutions*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

PRACTICE NOTE: APPLICATIONS FOR LEAVE TO APPEAL

Lord Goddard, C.J., Finnemore and McNair, JJ.
6th October, 1952

LORD GODDARD, C.J., said that it had been decided to approximate the practice of the court to that of the Appeal Committee of the House of Lords and of the Judicial Committee of the Privy Council; and, in ordinary cases, to state no reasons when an application for leave to appeal was refused. Such applications were never refused, unless three, or more frequently, four, judges were unanimous. There was no reason for giving judgments on the matter, as the only person really interested, the applicant, was never present. There was a danger, in the absence of argument, that a judge might let fall something which was not strictly accurate in law. There was no reason for giving judgments, and in future the court would say no more than that the application was granted or refused, unless there was some particular point to which attention should be drawn. Applications in capital cases had always been treated as appeals: counsel on both sides were present, and in future they would be listed and treated as appeals.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

Licensed Premises in New Towns Bill [H.C.] [16th October.

Read Second Time:—

Hamilton Burgh Order Confirmation Bill [H.C.] [15th October.

Lerwick Harbour Order Confirmation Bill [H.C.] [15th October.

Marine and Aviation Insurance (War Risks) Bill [H.C.] [14th October.

In Committee:—

Intestates' Estates Bill [H.C.] [16th October.

B. DEBATES

On the committee stage of the **Intestates' Estates Bill,** LORD SILKIN criticised cl. 1, which provides for a widow or widower having £5,000 absolutely and a life interest in half the remainder. This arbitrary figure bore no relation to the actual size of the estate. If it covered the whole estate children of the marriage (or of an earlier marriage) were left unprovided for. If the estate were large, it might involve the surviving spouse in a sudden reduction of living standards. He did not think the courts would be very willing to exercise the power given them of increasing the provision unless there were extraordinary circumstances. He would have preferred that the widow should receive a proportion of the total estate. The same objections applied to the £20,000 provided by the Bill for the widow where there were *no* surviving children.

LORD MORTON said the Council of The Law Society had recommended the figure of £5,000. Where the estate was below £2,000, 73 per cent. of testators since 1940 had given all their estate to their widows. Between £2,000 and £5,000 the figure was 65 per cent. Under cl. 8 of the Bill the provisions of the Inheritance (Family Provision) Act, 1938, were applied to intestacies and it was open to step-children who were unprovided for under the Act to make application to the court.

LORD MANCROFT proposed an amendment to cl. 2 (right of surviving spouse to have life interest redeemed) to provide that notification in writing of intention to opt for such redemption should not be revocable except with the consent of the personal representative. The amendment was accepted. A further amendment by Lord Mancroft was also accepted enabling an infant life-tenant to require his or her interest to be redeemed.

LORD SILKIN said he did not like the fact that under cl. 2 the survivor had an absolute right to have his or her estate redeemed no matter what was the nature of the estate. Suppose it consisted of a small private company which was doing very well. If the personal representatives had to redeem they would have to sell the shares—perhaps at a sacrifice. There was no provision enabling the personal representatives to go to court and point out the inadvisability of selling. LORD MORTON said the redemption provision was inserted principally to cover cases where the life interest was small and involved a disproportionate expense in maintaining it. There might be foolish widows who insisted on killing the goose that laid the golden egg—that was a risk that had to be taken.

LORD MANCROFT next moved the deletion of cl. 6, which allowed the spouse to require acquisition of a business owned by the intestate alone or in partnership with the spouse. This matter had never been before the Morton Committee. It had been inserted by a private member in the Commons after little or no discussion, and it was condemned by, among others, the Council of The Law Society. He was not saying that women could not run businesses efficiently, but that in fact very few testators contemplated their wives running their businesses after their deaths. His amendment was agreed to. [16th October.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read Second Time:—

Irish Sailors and Soldiers Land Trust Bill [H.L.] [16th October.

Visiting Forces Bill [H.L.] [17th October.

Read Third Time:—

Insurance Contracts (War Settlement) Bill [H.L.] [16th October.

In Committee:—

Housing (Scotland) Bill [H.C.] [16th October.

B. QUESTIONS

CRIMINAL RESPONSIBILITY OF PERSONS OF UNSOUND MIND

Sir HUGH LUCAS-TOOTH refused a request by Mr. HYLTON-FOSTER that a Royal Commission should be appointed to consider

what changes might be necessary in the law relating to the criminal responsibility of persons of unsound mind. The Royal Commission on Capital Punishment appointed in 1949 had been examining these problems and would doubtless include observations thereon in its report. He understood that this should be available within the next few months. [15th October.

STATUTORY INSTRUMENTS

Draft **Agriculture** (Ploughing Grants) (Scotland) (No. 2) Scheme, 1952. 5d.

Broadmoor Institutions (Amendment) Rules, 1952. (S.I. 1952 No. 1811.)

Draft **Civil Defence** (Appropriation of Lands and Buildings) Regulations, 1952.

Control of Containers and Packaging (Revocation) Order, 1952. (S.I. 1952 No. 1810.)

Control of Rams Regulations, 1952. (S.I. 1952 No. 1800.) 8d.

Eggs (Great Britain and Northern Ireland) (Amendment No. 8) Order, 1952. (S.I. 1952 No. 1818.) 5d.

Exchange Control (Payments) (Liberia) Order, 1952. (S.I. 1952 No. 1805.)

Firearms (Scotland) Rules, 1952. (S.I. 1952 No. 1792 (S.97).) 5d.

Halifax (Water Charges) Order, 1952. (S.I. 1952 No. 1808.)

Iron and Steel Prices (No. 3) Order, 1952. (S.I. 1952 No. 1795.)

Draft **Local and Other Authorities** (Scotland) (Transfer of Stock) Regulations, 1952. 8d.

London Traffic (Prescribed Routes) (No. 20) Regulations, 1952. (S.I. 1952 No. 1798.)

London Traffic (Prohibiting of Waiting) (Slough) Regulations, 1952. (S.I. 1952 No. 1799.)

Price-Controlled Goods (Restriction of Resale) (Revocation) Order, 1952. (S.I. 1952 No. 1814.)

Purchase Tax (No. 6) Order, 1952. (S.I. 1952 No. 1787.)

Sevenoaks and Tonbridge Water Order, 1952. (S.I. 1952 No. 1801.)

Stopping up of Highways (Leeds) (No. 1) Order, 1952. (S.I. 1952 No. 1796.)

Stopping up of Highways (Middlesex) (No. 4) Order, 1952. (S.I. 1952 No. 1797.)

Sugar (Prices) (Amendment No. 4) Order, 1952. (S.I. 1952 No. 1794.)

Draft **Teachers Superannuation** (Royal Air Force Education) Amending Scheme, 1952.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102-103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 102-103 Fetter Lane, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Rent Restriction—Combined Shop and Dwelling Accommodation—Dwelling Accommodation Vacant—Possession of Whole

Q. In 1932 property consisting of a shop on the ground floor with living accommodation on the first and second floors was let by *L* to *R* at £1 per week inclusive. One year afterwards *R* purchased a private dwelling-house in the vicinity and sub-let the dwelling accommodation over the shop to *X*. After occupying the said dwelling accommodation until recently (with the knowledge of *L*), *X* vacated it and it is now vacant. The rent has been and is being regularly paid by *R*. *L* wishes to be advised whether *R*, by having lived elsewhere for the past nineteen years, has lost the protection of the Rent Restrictions Acts and whether, therefore, *L* can obtain possession of (1) the whole premises, or (2) the shop alone, or (3) the dwelling accommodation alone.

A. (1) If the first and second floors were not occupied as a residence when a notice to quit expired, *L* would be entitled to possession of the whole of the premises, it being assumed that *R* would not be able to establish a *bona fide* intention to return to and live in the dwelling accommodation (*Skinner* v. *Geary* [1931] 2 K.B. 546 (C.A.)). It is advisable to give the shortest possible notice so as to reduce the risk of complications brought about by *R* returning to or again sub-letting the upper floors during its currency, though the genuineness of such a transaction could always be impugned. A return or sub-letting after tenancy expired would not avail *R* (*John M. Brown, Ltd.* v. *Bestwick* [1950] 2 All E.R. 338 (C.A.)). (2) and (3) The facts do not warrant the inference that this is a " two entities " case, and in our opinion it would not be possible to recover possession of part of the premises comprised in the tenancy on the lines of *Murgatroyd* v. *Tresarden* [1947] K.B. 316 (C.A.) or (the carrying on of the shop being the dominant purpose of the letting) of *Thompstone* v. *Simpson* [1952] 1 T.L.R. 447 (C.A.).

Estate Duty—Adult Children Wishing to Provide for Father—Advantages of Deed of Covenant over Declaration of Trust Giving Life Interest

Q. *X*, the wife of *Y*, dies, leaving her surviving *Y* and two adult children, *M* and *F*. By her will, made in 1932, *X* appointed her husband *Y* her sole executor and directed that all her realty and personalty was to be divided equally between her two children, *M* and *F*. It is known to *Y*, *M* and *F* that *X*, before she died recently, intended to execute a new will leaving *Y* a life interest in her estate and then to *M* and *F* equally and absolutely. *M* and *F* now wish to give effect to this intention in such a way as to obviate the necessity for them to pay income tax on the investments, etc., comprising *X's* estate during the lifetime of *Y*, and also to obviate the necessity to pay death duty on the capital sum on the death of *Y*, as would have been the case if *X* had executed her new will as aforesaid. The estate is only worth about £7,000, but *M* and *F* are paying income tax at the standard rate of 9s. 6d. in the £, whereas *Y* is not, nor will he have to do so even with this income. *Y* is retired, impecunious, aged 65, but in good health. We have advised that *M* and *F* should execute a declaration of trust in favour of *Y* identical, to all intents and purposes, with that to be found on p. 712 of vol. 16 of the third edition of Butterworth's Encyclopædia of Forms and Precedents. This will take care of the income tax question, but we will be obliged if you will confirm that it will also take care of the death duty question and, if not, can you suggest any method of so doing ?

A. If the proposed declaration of trust is executed, under which *M* and *F* give their father, *Y*, a life interest in the property which they have inherited, there will be no estate duty on the property on the death of *Y*, provided that *M* and *F* are then living. The case will be within the exemption conferred by s. 15 of the Finance Act, 1896. The danger of the proposal is, however, that if *M* or *F* predecease *Y*, duty may be attracted, not only in respect of the death of *M* or *F*, but also in respect of the death of *Y*. The death of *M* or *F* at any time would attract duty on the value of the deceased's remainder (as well as on the value of the father's life interest as a gift *inter vivos* if the death occurred within five years). Not only that (which is a burden which cannot be avoided), but on the subsequent death of *Y* duty would be attracted on one-half of the property (or the whole if both *M* and *F* had died), because the exemption under s. 15 of the Finance Act, 1896, applies only if the property reverts to the settlor in his lifetime. It seems to us that the desired result would be better achieved by a deed of covenant than by a declaration of trust. The deed should provide for annual payments to *Y* for life by *M* and *F* or their respective personal representatives. This would put the position in order both as regards tax and as regards estate duty. The disadvantage, of course, is that *Y* has no security for the payments.

Lease—Lessee to Pay Fire Insurance Premiums—Whether Insurance to Cover Full Reinstatement Cost

Q. We act for the lessee under a lease of May, 1946. This lease contains the provision that the lessee, in addition to the rent, shall yield and pay by way of further rent during each year of the term a sum equal to the sum or sums which the landlord shall from time to time pay by way of premium for keeping the demised premises insured against loss or damage by fire, and for insuring one year's rent in case of damage by fire. There is no provision in the lease requiring the landlord to rebuild in case of fire, but there is the usual provision for abatement of rent if the

premises are destroyed or damaged by fire. A dispute has now arisen between our client and the lessor as to the sum for which the premises are to be insured against fire. The rent payable under the premises is £800 per annum exclusive, and when our client purchased the property about a year ago the premises were insured in the sum of £15,000, which we think represents their market value. The lessor, however, contends that he is entitled to insure the premises for the full reinstatement cost, which cost has been estimated at £35,000—a considerable difference—and points out that under the provisions of s. 83 of the Fires Prevention (Metropolis) Act, 1774, the lessee would be entitled to call upon the insurers of the property to apply the policy moneys in rebuilding it instead of repaying them to the lessor. It should be mentioned that the premium which the lessor requires our client to pay is in the region of £350 per annum, as the lessee is a furniture manufacturer, and accordingly pays a comparatively high rate of premium. Our own view is that the lessor is not entitled to require the lessee to insure for a sum in excess of the market value and, as regards the provision under the Fires Prevention (Metropolis) Act, 1774, it will be appreciated that this only arises upon request therefor and the lessee could, therefore, reasonably undertake not to make any such request.

A. The point does not appear to have arisen in any reported case between landlord and tenant, but in our opinion the lessor's contentions are not sound. In general, "to keep insured against loss or damage by fire" means to take out an ordinary fire policy, the amount recoverable being the amount by which the value of the property has been reduced (see *Westminster Fire Office* v. *Glasgow Provident Investment Society* (1888), 13 App. Cas. 699). "Consequential" loss can be insured against, and this may be done in the same policy, but such loss is not a necessary, reasonable, probable consequence of a fire; not a natural, but an accidental consequence (see the decision cited); it would follow that "to keep insured against loss or damage by fire" contemplates an "ordinary" fire policy. This contention is strengthened by the insertion of a "rent clause" provision, as showing that the parties had considered whether to insure against consequential loss and, if so, against what consequential loss, and had deliberately limited the extra insurance to the amount of one year's rent.

Costs—Fees in Addition to Building Society Scale

Q. Are solicitors acting for a building society only, where other solicitors are acting for the purchaser mortgagor, entitled, in addition to the building society's solicitors' scale fee, to charge an additional fee for (*a*) attending at the Land Registry to lodge the papers, (*b*) attending completion at any office other than their own, and (*c*) attending to register particulars of the conveyance or transfer under the Finance Act, 1931?

A. The building society scale will cover (*a*) attending to lodge the documents relating to the mortgage at the Land Registry. It does not cover the additional work of attending at an office other than the building society's solicitors' own, and they will be justified in making a charge in respect of this under Sched. II. The lodging of the particulars under the Finance Act, 1931, is work which should be done by the purchaser's solicitors, and is not covered by the scale. If, by arrangement, the building society's solicitors lodge these particulars then they are entitled to a fee in respect thereof under Sched. II. Otherwise the purchaser's solicitors will lodge them and will make an appropriate charge.

NOTES AND NEWS

Honours and Appointments

The Hon. Charles Ritchie Russell, Q.C., has been elected a bencher of Lincoln's Inn.

Mr. J. C. Swaffield, assistant solicitor at Norwich, has been appointed senior assistant solicitor to Cheltenham Corporation.

Personal Notes

Mr. Frank Chester, who has served for forty-five years as acting Clerk of the Peace for Lincoln, has been presented with an inscribed silver cigarette case by the Recorder.

Miscellaneous

Official Copies of Grants of Representation

Practitioners are reminded that "shilling copies" of grants (photographic copies bearing the small seal of the court, issued from the Probate Registries since 1934) can be used throughout the United Kingdom for all purposes (s. 174 (2) of the Supreme Court of Judicature (Consolidation) Act, 1925, and s. 82 of the Companies Act, 1948). "Certified" or "sealed and certified" copies are therefore normally required only for use abroad in places where an uncertified copy is not acceptable.

L.C.C. Development Plan Inquiry

Objections relating to the Borough of Holborn will begin to be heard at 10.15 a.m., on Tuesday, 28th October, at the inquiry into objections to the development plan for the County of London.

SOCIETIES

SOLICITORS' ARTICLED CLERKS' SOCIETY

Mr. William Charles Crocker, M.C., Vice-President of The Law Society, will be giving a general talk to the above Society on Tuesday, 28th October, at The Law Society's Hall, Chancery Lane, London, W.C.2. This will commence at 7 p.m., preceded by refreshments at 6 p.m. Admission free. Members only.

The annual general meeting of the above society is being held on Thursday, 20th November, 1952, time and place as above.

Full details regarding activities and membership of the Society may be obtained from the Hon. Secretary, c/o Law Society's Hall, address as above.

The Union Society of London, meeting in the Common Room, Gray's Inn, at 8 p.m., announces the following subjects for debate:—

Wednesday, 29th October.—"That the disunity within the Labour Party renders it unfit to form a government."

Wednesday, 5th November.—"That this House would welcome Central African Federation."

Wednesday, 12th November.—"That this House has no confidence in the English legal system."

Tuesday, 18th November (Joint Debate with the Law Students' Debating Society).—"That this House regrets the result of the American Presidential Election."

The Union Society of London will be the guests of the Law Students' Debating Society at this meeting, which will be held at the Law Society's Court Room, 60 Carey Street, W.C.2, at 7 p.m. There will be no meeting on Wednesday, 19th November.

PRINCIPAL ARTICLES APPEARING IN VOL. 96

4th to 25th October, 1952

Lists of articles published earlier this year appear in the Interim Index (to 28th June) and at p. 632, *ante* (5th July to 27th September).

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: 102–103 Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

Annual Subscription: Inland £3 15s., Overseas £4 5s. (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Wednesday.

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